

Appl. No. 09/755,353  
Atty. Docket No. 8387&  
Amdt. dated 11/18/2004  
Reply to Office Action of 05/19/2004  
Customer No. 27752

## REMARKS

### I. Claim Status

Claims 1-30 are pending in the present application. No additional claims fee is believed to be due.

Claim 19 has been amended to change the claim dependency from Claim 7 to Claim 9 in order to provide proper antecedent support for the Claim 19 claim limitation "said consumer panel".

It is believed this change does not involve any introduction of new matter. Consequently, entry of this changes is believed to be in order and is respectfully requested.

### II. Rejection Under 35 USC §101

The Office Action States that Claims 1-19 are rejected under 35 USC §101 because the claimed invention is directed to non-statutory subject matter". Specifically the Office Action indicates that the subject matter claimed is merely an abstract idea that does not produce a useful, tangible, concrete result.

The purpose of conducting consumer product research according to Claims 1-19 is to generate data to better understand the needs and desires of consumers, including especially understanding consumers reactions and experiences with products. Consumer product research is a valuable asset in industry, and is commonly the subject of significant investment of both time and resources of industrial and commercial concerns - many commercial companies have in-house groups specializing in the development of consumer product research; other commercial concerns exist for the purpose of providing consumer product research services to others. Furthermore, consumer product research developed for a product research, regardless of whether such research reflects a positive or negative set of experiences and impressions of the consumer, are important leanings and highly valuable to industrial and commercial concerns. Therefore, Applicants contend that Claims 1-19 do not claim a mere abstract idea but, rather, produce a useful, concrete, and tangible result.

The Office Action also states that the claims did not constitute statutory subject mater on the basis that they did not involve any computer means or equivalents to carry out any functions. It is not necessary for a claimed invention, even a business method invention, to involve computer means or equivalents. An invention can satisfy the statutory requirements of 35 USC §101 even

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if it is carried out in the human mind, or with the aid of the human mind, so long as it produces a useful, concrete, and tangible result. *In re Musgrave*, 431 F.2d 882, 893, 167 USPQ 280, 289 (CCPA 1970).

Consequently, Applicants maintain that Claims 1-19 satisfy the statutory requirements of 35 USC §101.

### III. Rejection Under 35 USC §112, Second Paragraph

The Office Action States that Claim 19 is rejected under 35 USC §112 on the basis that the limitation "said consumer panel" does not have proper antecedent basis in the claim. Claim 19 has now been amended to depend upon Claim 9 instead of Claim 7. Claim 9 provides express antecedent basis for said limitation.

### IV. Rejection Under 35 USC §102 and/or 35 USC §103(a) of Claims 1-4, 6-8, 12-16, and 19

Claims 1-4, 6-8, 12-16, and 19 have been rejected under 35 USC §102(b) and anticipated by, or in the alternative, under 35 USC §103(a) as obvious over Article 3/99 "New Uses That Revitalize Old Brands" by Wansink, et al. (hereinafter referred to as "Wansink"). Applicants respectfully traverse these rejections.

#### (A) 35 USC §102

The present invention, according to the above-referenced claims, relates to a method of conducting consumer product research to test a product in a desired context. To test a product "in a desired context" means that the context for using the product (i.e., the "desired" context) is known prior to testing.

Wansink suggests use of a laboratory home for the purpose of identifying new uses for old brands. In particular, the consumer is asked to tour the environment and articulate uses for the brand being tested (see Wansink, page 3, second paragraph). Wansink does not disclose testing a product in a known, or "desired" context because under the Wansink methodology the testing organization does not yet know what the context is. In other words, they are using the methodology to identify previously unknown contexts. In view of the above, Wansink does not anticipate any of the above-rejected claims.

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(B) 35 USC §103(a)

Referring to Wansink, page 3, second paragraph, it is taught that the consumer "tour the environment and articulate uses" for the brand being tested. There is no suggestion to modify or adapt the process by having the consumer test products in a known or desired context. Accordingly, Wansink does not make the above referenced claims obvious to one of ordinary skill in the art under 35 USC §103.

V. Rejection Under 35 USC §102 and/or 35 USC §103(a) of Claims 5, 9-11, and 17-18

Dependent Claims 5, 9-11, and 17-18 (all dependent directly or indirectly upon Claim 1) have been rejected under 35 USC §103 as being obvious over Wansink.

Applicants respectfully submit that these claims are unobvious over Wansink for the same reasons stated above with respect to Claim 1.

VI. Rejection Under 35 USC §102 and/or 35 USC §103(a) of Claims 20-30

Claims 20-30 have been rejected under 35 USC 102(b) and anticipated by, or in the alternative, under 35 USC §103(a) as obvious over Wansink.

Applicants respectfully traverse this rejection for the same reasons stated above with respect to Claim 1.

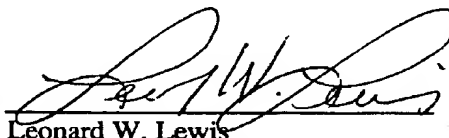
VII. Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections of Claims 1-30. Early and favorable action in the case is respectfully requested.

Respectfully Submitted,

THE PROCTER & GAMBLE COMPANY

By



Leonard W. Lewis  
Registration No. 30,769  
(513) 634-5649

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